



Michigan Bankers Association



May 27, 2010

The Honorable Sarah Roberts
The Honorable Andy Neumann
State Representatives
P.O. Box 30014
Lansing, MI 48909

Dear Representative Roberts and Neumann:

We write to comment on HB 5187 (H-1) (Draft 1) and HB 5193. These bills are reintroductions of bills that passed the House of Representatives last term and would add financial exploitation to the list of reportable abuses of vulnerable adults in the Social Welfare Act. As you know, the members of the Michigan Bankers Association (and Michigan Credit Union League) investigate and report financial exploitation and fraud each and every day. They report to the Department of Human Services and to law enforcement. Our members are diligent in detecting fraud and abuse in order to protect ALL of our customers.

Last term the issue of protecting against financial exploitation included many provisions that made the reporting of the financial exploitation more manageable. For example, the financial institution was required to be the reporter and was granted civil immunity. When the financial institution is a reporter, which is common in other states, the institution can do a proper investigation of the fraud, work to stem losses immediately, assure that all state and federal privacy laws are followed and work closely with the state department and/or law enforcement.

Second, the House recognized that there are various providers of financial services that should be included in the realm of reporting financial exploitation. One concern of our members is that criminals who are preying on vulnerable adults will go to less regulated and untrained providers of financial services and avoid regulated and trained banks and credit unions. This will NOT accomplish the goal of reducing financial exploitation.

Lastly, the MBA recommended that the institution should report only financial exploitation as far as it relates to the bank or credit union. As introduced last term, a financial institution would have been responsible for reporting all kinds of abuse to the Department of Human Services, simply by including banks in the Social Welfare Act. Although all financial institutions abhor physical and sexual abuse; our training and knowledge precludes accuracy and accountability of reporting non-financial abuse.

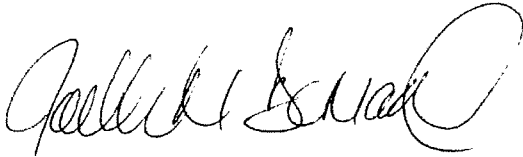
HB 5187 (H-1) (Draft 1) and HB 5193 reflect those important elements. Thank you for addressing the concerns from previous bills.

The bills also now remove the mandatory reporting requirement, require training of employees at financial institutions and provide immunity for good faith reporting of financial exploitation. These elements of HB 5187 go a long way to allowing Michigan banks to implement training. However, there remain many legal considerations in the definitions in HB 5193. We would recommend fine tuning the definitions for example deleting "deception", "intimidation", "incapacitated", "suspected financial exploitation" and refining "financial institutions" to better reflect those entities that would need to train their employees to help reduce financial exploitation. I have attached a page of amendments for your review.

Thank you for your consideration of our position on this very important issue. We look forward to supporting these bills with these amendments.

Sincerely,

Joelle Demand

A handwritten signature in black ink, appearing to read "Joelle Demand", with a large, stylized loop at the end.

Michigan Bankers Association
(517) 282-9811

Jordan Kingdon

A handwritten signature in black ink, appearing to read "Jordan Kingdon", with a large, stylized loop at the end.

Michigan Credit Union League
(517) 614-6758

HB 5193 – amendments/suggestions

Technical:

1. p. 3, line 1, should be plural, “ASSETS”

Most Important:

2. p. 3, line 4, insert “PAYDAY LENDERS”

p. 3, line 5, after “COMPANY,” by inserting “OR ITS AGENTS,”

p. 3, line 5, after “SERVICES” by inserting “, INCLUDING BUT NOT LIMITED TO STOCKS, ANNUITIES, VIATICAL INSTRUMENTS, REVERSE MORTGAGES, LONG OR SHORT TERM FINANCING, INVESTMENT MANAGEMENT OR ADVICE,”

3. In HB 5187, p. 4, line 5, strike remainder of subsection

Next of importance:

4.1. p. 1, lines 6-8 – the definition of “adult” and p. 4, lines 22-24, By the these definitions, this law applies only to ‘vulnerable adults’. Vulnerable is defined later in the act as pertaining to someone with a mental or physical impairment or of advanced age. In effect, by definition, this law does not apply to exploitation of adults who are of sound mind who are being scammed by someone, such as a Nigerian letter. Is that the intent that this bill applies only to those impaired or of advanced age?

5. p. 2, line 20-27, p. 3, line 1 - “Exploitation” already includes financial exploitation by mentioning the “misuse of an adult’s funds, property”. It’s excessive and confusing defining, “exploitation”, “financial exploitation” and “suspected financial exploitation.” Needs to be made more clear. OR p. 4, line 13, delete definition of “suspected financial exploitation” through p. 4, line 20. and in HB 5187 (H-1) on p. 3, line 22, strike “suspected”.

6. p.1, line 9—delete definition of “deception” through p.2, line 19.

7. p. 2, lines 26, 27, strike “INCAPICITATED OR” – Reason: there is no definition provided.

8. p. 2, lines 26, 27 - strike “VULNERABLE” – Reason: vulnerable is already used in the definition of “adult”, it is redundant and confusing.

9. p. 2, line 24, strike “BY INTIMIDATION OR DECEPTION” on line 25.

10. p. 3, line 7, delete definition of “intimidation” through p. 3, line 10.

11. p. 2, line 23 and 24, strike “IN A POSITION OF TRUST AND CONFIDENCE” – Reason: a scam artist or conman could be anybody, not just somebody known. Why narrow the definition to people in a position of trust and confidence?

12. p. 3, line 26 - This defines a person of trust. However, the definition of financial exploitation speaks of a person of trust *and confidence*. Since to accuse a person of financial exploitation requires proof that they are a person in a position of trust *and confidence*, we need to amend this term to a “POSITION OF TRUST AND CONFIDENCE” or delete the words ‘AND CONFIDENCE’ or “IN A POSITION OF TRUST AND CONFIDENCE” from the definition of financial exploitation.

